IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 569 OF 2005

The Ichalkaranji Urban Co-op.Bank Ltd. ... Petitioner.

Versus

Arun B. Khanjire & Ors.. .... Respondents.

Mr. Y. S. Jhagirdar, Sr. Advocate i/by Mr. A. A. Kumbhakoni with Mr. A. M. Kulkarni for the Petitioner.

Mr. B. P. Apte, Sr. Advocate i/by Ms. Anjali Helekar for Respondent No.1.

Mr. Y. D.Mulani, AGP for Respondent Nos.2 and 3.

CORAM: DALVEER BHANDARI, C.J. &
S. A. BOBDE, J.

DATED : APRIL 8, 2005.

P.C. :

Petitioner is a Ichalkaranji Urban Co-operative Bank Limited. By this petition it has challenged the order dated 15th

January, 2005 passed by one U. U. Shaikh, Divisional Joint Registrar, Co-operative Societies, Kolhapur Division, Kolhapur in Misc. Complaint No. 1/A of 2004.

2. By the impugned order, the Div. Joint Registrar has purported to exercise the powers of revision conferred upon him under Section 154 of the Co-operative Societies Act *suo moto*, but has in fact allowed the respondent No.1 borrower's application for revision. That application is styled as a complaint. As a result the Div. Joint Registrar has set aside the recovery certificate obtained by the petitioner bank and has remanded the matter back to the Assistant Registrar for effective hearing.

3. The petitioner bank claims that an amount of Rs.413.16 lacs with interest is due to it as on 31st December, 2003. This amount is claimed under 17 loan transactions in which respondent No.1 is either a principal borrower or a Director. In some loan transactions, the loan is taken by the business concerns of

respondent No.1.

4. The respondents disputed their liability and filed an application under Section 91 of the Maharashtra Co-operative Societies Act. The Co-operative Court initially granted an order of *status quo* but vacated it after hearing the bank. The Co-operative Appellate Court confirmed the order of the Co-operative Court and refused to stay the recovery.

5. In the meanwhile, the petitioner bank initiated actions for recovery under Section 101 of the Maharashtra Co-operative Societies Act against the respondent No.1 and his business concerns. These proceedings were stalled in view of a doubt as to the tenability of the proceedings under the Maharashtra Co-operative Societies Act in view of the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. However, after certain orders were passed by the Supreme Court of India the proceedings were revived.

6. On 12th March, 2004 the Assistant Registrar of Co-operative Societies issued 12 recovery certificates. The 1st Respondent and his other concerns filed three writ petitions before this Court in which this Court declined any relief. On 30th June, 2004 the bank issued demand notices to 1st respondent and his other concerns in respect of the loan amounts. A warrant of attachment was also issued. On 15th July, 2004 the 1st respondent resorted to an ingenious procedure. He filed a Misc. Complaint Application before the Divisional Joint Registrar seeking therein the same relief as in a revision application. The relief sought, is as follows:-

> "By this application we call upon you to call for Record and Proceedings of the above matters from the office of Assistant Registrar Co-operative Societies (On Deputation), Kolhapur, and verify the above mentioned allegation and to take appropriate actions and to quash and set-aside

said certificates being patently illegal and unjust and against the provisions of law and for this act of kindness we shall always be obliged."

7. The person holding charge of the Divisional Joint Registrar did not take any action of this so called complaint. Thereafter, the 4th respondent, Shaikh, was appointed as Divisional Joint Registrar. About five months after the said complaint was filed notices were issued on 13th December, 2004 to all the parties. On 15th December, 2004 the petitioner appeared and the new Div. Joint Registrar granted *status-quo* and fixed the matter for hearing on 22nd December, 2004. Overruling all objections that respondent No.1's application is in fact a revision and must only be decided in accordance with Section 154 of the Maharashtra Co-operative Societies Act, which also requires a deposit of 50% of the amount, the Divisional Joint Registrar has set aside the recovery certificates. Section 154 of the Maharashtra Co-operative Societies Act, reads as follows:-

"154. Revisionary powers of State government and Registrar.-(1) The State Government or the Registrar, *suo moto* or on an application, may call for an application, may call for and examine the record of any inquiry or proceedings of any matter, other than those `referred to in sub-section (9) of section 149, where any decision or order has been passed by any subordinate officer, and no appeal lies against such decision or order, for the purpose of satisfying themselves as to the legality or propriety of any such decision or order, and as to the regularity of such proceedings, if in any case, it appears to the State Government, or the Registrar, that any decision or order so called for should be modified, annulled or reversed, the State Government or the Registrar, as the case may be, may, after giving the person affected thereby an opportunity of being heard, pass such orders thereon as to it or him may seem just.

(2) Under this section, the revision shall lie to the State Government if the decision or order is passed by the Registrar, the Additional Registrar or a Joint Registrar, and to the Registrar if passed by any other officer.

(2A) No application for revision shall be entertained against the recovery certificate issued by the Registrar under Section 101 unless the applicant deposits with the concerned society, fifty percent amount of the total amount of recoverable dues.

(3) No application for revision shall be entertained, if made after two months of the date of communication of the decision or order. The revisional authority may entertain any such application made after such period, if the applicant satisfies it that he had sufficient cause for not making the application within such period.

(4) The State Government may, by order, direct

that the powers conferred on it by this section shall, in such circumstances and under such conditions if any, as may be specified in the direction, be exercised also by an officer of the rank of Secretary to Government."

This provision undoubtedly empowers the State Government to revise any decision or order passed by any subordinate Officer suo moto in accordance with the section. Importantly, section 28 inserted by Maharashtra Act No.41 of 2000 makes it compulsory for an applicant seeking a revision to deposit 50% of the total amount of recoverable dues. In this case, the Divisional Joint Registrar did not exercise the revisional powers and set aside the certificate without calling upon the petitioner to make a deposit as contemplated by sub-section (2A) of section 154 of the Act.

8. The constitutional validity of sub-section (2A) has been upheld by a Division Bench of this Court in Kausalya Sampat v. Vasant Sahakari Bank Ltd. & Ors. (2004 (4) Mh. L.J. 795). This

Court followed a series of decisions of the Supreme Court on the point, viz., The Anant Mills Co. Ltd. v. State of Gujarat & Ors. ((1975) 2 SCC 175); Seth Nand Lal & Anr. vs. State of Haryana & Ors. (1980 (Supp.) SCC 574); Vijay Prakash D. Mehta & Anr. v. Collector of Customs (preventive) Bombay ((1988) 4 SCC 402; Shyam Kishore & Ors. v. Municipal Corporation of Delhi & anr. ((1993) 1 SCC 22) and State of Tripura v. Manoranjan Chakraborty & Ors. ((2001) 20 SCC 740), while doing so.

9. Mr. Apte, learned Counsel appearing for respondent No.1, relied on a decision of the Supreme Court in Everest Apartments v. State (1966 (Vol. LXVIII) B.L.R. 664) in which Their Lordships construed section 154 of the Act before it was substituted by Maharashtra Act No.3 of 1974. Earlier, the section did not empower the State Government or the Registrar to revise any decision or order “on an application”. It merely conferred the power to call for and examine the record for the purpose of satisfying themselves as to the legality or propriety of any decision

or order passed, the usual revisional powers. Even in the absence of any provision enabling a party to apply, the Supreme Court observed:-

> “But that does not mean that a party is prohibited from moving Government”.

That decision has no application to the present case.

10. Faced with the non-observance of sub-section (2A) by the Divisional Joint Registrar while exercising the revisional powers under section 154, Mr. Apte, learned Counsel for respondent No.1, submitted that there is no irregularity in the exercise of the jurisdiction by the Divisional Joint Registrar. According to the learned Counsel, the condition of pre-deposit of 50% imposed by sub-section (2A) is, in turn, applicable only when an application for revision is made to the Registrar. Since no such application was made and the power was exercised suo moto, there was no need for compliance with sub-section (2A).

11. The point may be arguable. We are, however, satisfied that the argument is wholly inapplicable to the present case, because the respondent No.1 has resorted to subterfuge and strangely, the Divisional Joint Registrar has acceded to it. Respondent No.1, in fact, invoked the jurisdiction of the Divisional Joint Registrar by filing an application styled as a miscellaneous complaint. In truth, it was nothing but an application for revision masked as a miscellaneous complaint. There is, therefore, no occasion for considering the validity of the submission on behalf of respondent No.1 that compliance with sub-section (2A) of pre-deposit was not necessary since the powers were exercised *suo moto*. Clearly, the revisional power was exercised on a revision application under section 154 and had to be decided in accordance with that section. The manner in which the jurisdiction has been exercised by the Divisional Joint Registrar has defeated the intention of the Legislature in enacting sub-section (2A). This constitutes an error of law apparent on the face of the record.

12. We are of view that sub-section (2A) lays down a condition precedent for entertaining an application or revision against a Recovery Certificate issued by the Registrar. That condition not having been satisfied, the Divisional Joint Registrar could not have proceeded to entertain and decide the revision application.

13. In the result, the impugned order is set aside. The rule is made absolute in terms of prayer clause (b) which reads as follows:

> "(a) This Honourable Court may be pleased to quash and set aside the impugned Judgment and Order dated 15.01.2005 issued by the 4th Respondent acting as 3rd Respondent in so-called Misc. Complaint Application 1/A/2004 (Exhibit "F" to the petition) and further may be pleased to reject the said so-called Misc. Complaint Application No.

1/A/2004 dated 15.07.2004 filed by the 1st Respondent herein (Exhibit “C” to the Petition)”.

Sd/-

CHIEF JUSTICE

Sd/-

S. A. BOBDE, J.